Bail Ship

The Appellant /Accused was directed to be release on bail as per the order of this court dated 8.10.01 and made Crl.R.C.NO.7029/2001

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No.940 of 2001

VELU ..Appellant/accused

-vs-

The Inspector of Police
K.Kalathur Police Station
Perambalur.
(Crime No.39/2000) .. Respondent/complainant

This appeal is filed against the Judgment made in S.C.No.13 of 2001 dated 31.8.2001 on the file of the Principal Sessions Judge, Perambalur.

For appellant : Mr.A.Sirajudeen
For respondent : Mr.V.R.Balasubramaniam
Additional Public Prosecutor.

JUDGMENT

The accused, who has been charged under Section 302 of IPC but was convicted under Section304(ii) of IPC by the learned Principal Sessions Judge, Perambalur, is the appellant herein.

2. The learned committal Court/ Judicial Magistrate , Perambalur, after taking the case under PRC No.40 of 2000 had issued summons to the accused and on his appearance copies under Section 207 of Cr.P.C. were furnished to the accused and committed the case to the Court of Sessions under Section 209 of Cr.P.C, since the case is exclusively triable by a Court of Sessions. The learned Sessions Judge, on appearance of the accused, had framed charge under Section 302 of IPC and when questioned the accused pleaded not guilty.

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3. Before the trial Court, P.Ws 1 to 16 were examined. Exs P1 to P10 were exhibited and M.Os 1 to 3 were marked.

4. P.W.1 is the grand daughter of the deceased Kaliammal. According to her, on 7.3.2000 at about 7.00 p.m, while the deceased was conversing with her(P.W.1), the accused came there along with Arjunan , Thambavoo, and one Subramanian and the accused had demanded Rs 100/- from the deceased Kaliammal, but when she had refused to give the amount, the accused had assaulted on her face, head with hands and also kicked her on the stomach and dragged her on the ground and also throttled her neck with hands. On hearing the distress call of P.W.1, and one Selvi P.W.2, the daughter-in-law of the deceased Kaliammal, P.W.3 Thambavoo and P.W.4 Arjunan, P.W.5 Krishnan and P.W.6, the wife of Krishnan came to the rescue, and the accused took to his heel and that Kaliammal had sustained injury on the upper lip, neck,back and on the stomach and was immediately taken to the hospital at Kuriyur and later she was brought to the house. She (P.W.1)tried to pour milk into the mouth of the deceased but was not consumed by the deceased. Kaliammal died on 8.3.2000 early morning. After the arrival of P.W.8, P.W.1 had preferred a complaint to Village Administrative Officer. Ex P1 is complaint preferred by her(P.W.1).

4a. P.W.2 is the daughter-in-law of the deceased Kaliammal. According to her, she is also residing with Kaliammal under the same roof along with her husband and that P.W.1 is her sister, who came to the house as a guest. She would also corroborate the evidence of P.W.1 to the effect that on 7.3.2000, P.W.1, the deceased Kaliammal and she(P.W.2) were conversing in the house , the accused came there along with Thambavoo and Arjunan had demanded Rs.100/- from Kaliammal. When she had refused to pay the amount, the accused had assaulted her with hands on the face, neck, back and also dragged her on the ground and throttled her neck with hands and at the intervention of Thambavoo, P.W.3 and Arjunan P.W.4, the accused ranaway from the place of occurrence. Kaliammal had sustained injury on the upper lip, back, neck and also on the stomach and that a complaint was preferred by P.W.1 after the arrival of P.W.2 on 9.3.2000, after the death of Kaliammal on 8.3.2000 at 6.00a.m.,

4b. P.W.3 to P.W.6 have not supported the case of the prosecution and hence they were treated as hostile witnesses. P.W.7 is another son of the deceased. He is not an eye witness to the occurrence. He would depose what P.W.1 and P.W.2 have narrated to him. P.W.8 is the brother of P.W.7. After hearing the sad demise of Kaliammal, he came to the house on 8.3.2000 night at 8.00p.m and his mother died early morning on 9.3.2000 . P.W.9 is the Village Administrative Officer to whom P.W.1 had preferred ExP1 complaint.

4c. P.W.11 is the Sub Inspector of Police, who had registered the case under K.Kalathur Police Station crime No.39 of 2000 under section 302 of IPC. Ex P3 is the first information report. P.W.15 is the Investigating Officer, who took up investigation in this case. After seeing the first

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information report, he had proceeded to the place of occurrence on 9.3.2000 at about 12.00 noon and prepared observation mahazar Ex P2 in the presence of P.W.10. He has also drawn a rough sketch in the place of occurrence under Ex P9. He had conducted inquest on the corpse of the deceased Kaliammal in the presence of Panchayatars. ExP10 is the inquest report. He has examined the witnesses and recorded their statements. The corpse was sent to post mortem through P.W.12, who had recovered M.O.1 to M.O.3 from the corpse after autopsy and handed over the same to the investigating Officer.

4d. P.W.13 is the head clerk, who had sent the material objects connected with this case to the forensic science laboratory for chemical examination along with Ex P5 letter of requisition by the Judicial Magistrate. ExP6 is the report received from the forensic science laboratory. P.W.14 is the doctor, who had conducted autopsy on the corpse of Kaliammal. ExP8 is the postmortem certificate . She had noted an abrasion measuring 2 x ½ cm on the right side of the upper lip of the deceased and had seen another lacerated injury measuring 3 x 2 cm on the left side of the nape and another lacerated injury measuring 2 x 2 cm on the back. She had noticed a contusion on the stomach , chest, left shoulder, and left forearm. As per the medical report , hyoid bone of the deceased was found to be in tact. she had opined that the deceased would have died due to asphyxia and due to strangulation.

4e. P.W.16 is the successor of P.W.15, who after completing the formalities had laid the charge sheet against the accused on 23.11.2000 under Section 302 of IPC.

5. When incriminating circumstances under Section 313 Cr.P.C.were put to the accused, he would deny his complicity with the crime. The accused has not adduced any evidence.

6. After meticulously going through the evidence both oral and documentary, the learned trial Judge has ultimately come to a conclusion that the accused is guilty under Section 304(ii) of IPC and accordingly convicted and sentenced the accused under Section 304(ii) of IPC to undergo four years rigorous imprisonment and slapped a fine of Rs.1000/- with default sentence, which necessitated the accused to prefer this appeal.

7. Now the point for consideration in this appeal is whether the conviction and sentence by the learned trial Judge against the accused under Section 304(ii) of IPC is sustainable for the reasons stated in the memorandum of appeal?

8. Heard Mr. A.Sirajudeen, learned counsel appearing for the appellant and Mr.V.R.Balasubramaniam, learned Additional Public Prosecutor for the respondent and considered their respective submissions.

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9. The Point:

The learned counsel appearing for the appellant would submit that the case of the prosecution is that, on the date of the occurrence, the accused had strangulated Kaliammal, the deceased with hands, which resulted in her death on the next day. But in Ex P1 complaint which was preferred by P.W.1 , there is no averments to the effect that at the time of the occurrence, the accused had strangulated Kaliammal.

10. Further the learned counsel appearing for the appellant would also contend that there is a delay in preferring the first information report. The occurrence, according to the prosecution, had taken place on 7.3.2000 at about 19.00 hours. According to P.W.9, the complaint was preferred by P.W.1 on 9.3.2000 at 9.00a.m. The explanation given on the side of the prosecution for the delay is that on the date of occurrence, the eldest son of the deceased Kaliamml viz., P.W.8 was not in station and that he was informed about the occurrence only at 8.00p.m., on 8.3.2000 and that he came to the house and admitted the injured Kaliammal in a hospital at Kuriyur on the same night. But without responding to the treatment his mother Kaliammal had breathed her last on 9.3.2000 morning. P.W.11 who had registered the first information report and also admit that P.W.1 came to the police station on 9.3.2000 at 11.00a.m., along with the Village Administrative Officer ,P.W.9 and preferred Ex P1 complaint.

11. But according to P.W.1, Kaliammal died in the early hours of 8.3.2000 itself. According to P.W.8, Kaliammal died only on 9.3.2000. P.W.14 the doctor, who had conducted autopsy on the corpse of Kaliammal,has opined that due to asphyxia due to strangulation, the deceased would have died. As per Ex P10 inquest report at column 15, the sentence (iffshy; fGj;ij behpj;Jk;)strangulation with hands was interpolated . This fact has been admitted by P.W.15 the investigating Officer in the cross examination also. So in Ex P1 complaint as well as in Ex P10 inquest report, there is absolutely no averments as to the commission of offence by the accused as to strangulating the deceased resulting in her death. So the prosecution is miserably failed to prove that the accused had strangulated the victim Kaliammal on the date of occurrence and at the place of occurrence which resulted in her death on 8.3.2000.

12. So, I am of the view that the conviction and sentence handed over by the learned trial Judge against the accused cannot be sustainable. But there is sufficient evidence through P.W.1 and P.W.2, and Ex P1 will go to show that the accused had assaulted Kaliammal the deceased with hands on 7.3.2000 at about 7.00p.m., causing simple injuries. This part of the evidence of P.W.1 and P.W.2 has been corroborated by the medical evidence by the Doctor P.W.14 who had issued Ex P8 post mortem certificate noting simple injuries on the right side of the upper lip , nape and back which warrants conviction under Section 323 of IPC . The point is answered accordingly.

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13.In fine, the appeal is partly allowed and the conviction and sentence of the learned Sessions Judge in S.C.No.13 of 2001 on the file of the Principal Sessions Judge, Perambalur under Section 304(ii) of IPC is set aside instead the accused is convicted under Section 323 of IPC and sentenced to undergo four months rigorous imprisonment and a fine of Rs.1000/- in default to undergo one month simple imprisonment . The fine of Rs.1000/- already paid by the accused under Section304(ii) of IPC shall be converted and treated as the fine imposed under section 323 of IPC. Set off is ordered under Section 428 of Cr.P.C. The trial Court is directed to issue Non Bailable warrant and secure the accused and send him to prison to undergo unexpended portion of the sentence.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

sg

To

1. The Principal Sessions Judge, Perambalur.

2. The Judicial Magistrate, Perambalur.

3. -do- through the Chief Judicial Magistrate, Perambalur.

4. The Public Prosecutor, High Court, Madras

5. The Inspector of Police, K.Kalathur Police Station, Perambalur

6. The Superintendent, Central Prison, Trichy

7. The District Collector, Perambalur.

8. The Director General of Police, Chennai.4.

+ 1 cc to Mr.Siraj&Siraj Advocate SR.NO.47805

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